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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,836	12/24/2003	Hirokazu Sakai	247085US0	1132
22850 7590 07/17/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER VENKAT, JYOTHSNA A	
			ART UNIT 1615	PAPER NUMBER
			NOTIFICATION DATE 07/17/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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oblonpat@oblon.com  
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# Office Action Summary

Application No.

10/743,836

Applicant(s)

SAKAI ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
- 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/9/06; 10/2/06; 4/26/06; 5/21/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of election filed on 5/2/07 and IDS filed on 1/9/06, 10/12/04, 5/21/04 and 4/26/04. Claims 1-9 are pending in the application and the status of the application is as follows:

#### ***Election/Restrictions***

Applicant's election with traverse of species formula (1) belonging to amphipathic lipid in the reply filed on 5/2/07 is acknowledged. The traversal is on the ground(s) that the office has not shown serious burden in examining entire application. This is not found persuasive because all the species belonging to amphipathic amide lipid are drawn to divergent compounds and the species are not obvious variants and art anticipating or rendering obvious one species would not anticipate or render obvious another species belonging to amphipathic amide lipid. It is a serious search burden to examine all the species.

The requirement is still deemed proper and is therefore made FINAL.

Applicants are notified that the species requirement between anionic surfactant is hereby withdrawn.

Amphipathic amide lipid is examined to the extent that it reads on the elected ultimate species.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being obvious over U. S. Patent 6,685,953 ('953) or PG PUB documents US2003/0208858 ('858), US2003/0215410('410) US2003/0215416 ('416), US2005/0095217 ('217) all taken individually and combined with U. S. patent 5,876,705 ('705).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the

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reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C.

103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

The instant application is claiming hair cleansing composition comprising:

1. Amphipathic amide lipid of formula 1
2. Anionic surfactant
3. Organic or inorganic acid
4. Silicone derivatives or cationic polymers (claim 5)
5. Nonionic or amphoteric surfactant (claim 6)

In patent '953, see the abstract, and see col.s 3-4 for elected species (formula F). Patent at col.7, ll 30-36 suggests surfactants and pH regulators can be added to compositions. Patent at same column, ll 40-44 teaches hair care applications and this includes shampoo. In PGPUB '858 see the abstract, and see col.2 for elected species (formula F). PGPUB at paragraph 23 suggests surfactants and pH regulators can be added to compositions. In PGPUB '410 see the abstract, and see col.2 for elected species (formula F). PGPUB at paragraph 32 suggests pH regulators can be added to compositions. In PGPUB '416 see the abstract, and see col.2 for elected species (formula F). PGPUB at paragraph 15 suggests, surfactants and pH regulators can be added to compositions. In PGPUB '217 see the abstract, and see col.2 for elected species (formula F). PGPUB at paragraphs 21-22 teaches amphoteric surfactants and at paragraphs 23-24 teaches anionic surfactants and non-ionic surfactants and silicone derivatives at paragraph 31 and cationic polymers at paragraph 32 and suggests pH adjusters at paragraph 33.

Patent '705 teaches conditioning shampoo compositions. See the abstract; see col.2, ll 25-30 for anionic, amphoteric and non-ionic surfactant. See col.s 4-5 and col.6, ll 1-34 for anionic

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surfactant, see ll 35-68 and col.s 7-8 and col.9, ll 1-6 for amphoteric surfactant, see col.9, ll 8-68 and col.10, ll 1-14 for non ionic surfactant, see col.12, ll 10-68 for hair conditioning agent. This includes claimed silicone at col.12, ll 40-68 and col.s 13-16. See col.17, ll 7-68, and col. 8 and col.19, ll 1-27 for cationic polymers. See paragraph bridging col.s 22-23 for acids and this includes phosphoric acid, citric acid, succinic acid (pH adjusting agents).

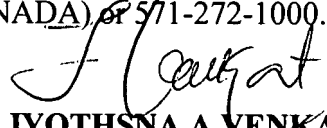
Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of patent and PG PUB documents, which are commonly owned and combine with agents that are conventionally used in hair care like surfactants and acids and silicone derivatives or cationic polymers taught by patent '705 expecting beneficial effect to hair. One of ordinary skill in the art would be motivated to add the ingredients of '705 with the reasonable expectation of success that the compositions which has the diamide provide moisturizing feel and silkiness to the hair and adding cationic polymers and silicone derivatives provide conditioning property to the hair and adding surfactant provide cleansing actions. Thus the compositions not only cleanse the hair but also provide moisturizing and conditioning properties to the hair. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**JYOTHSNA A VENKAT Ph. D**  
**Primary Examiner**  
**Art Unit 1615**

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